

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL A. FREEMAN,

Petitioner,

v.

Case No. 09-10518

HONORABLE PATRICK J. DUGGAN

BLAINE LAFLER,

Respondent.

**ORDER (1) DENYING AS MOOT PETITIONER'S MOTION TO SET ASIDE
THE MAGISTRATE JUDGE'S ORDER TO CORRECT DEFICIENCIES AND (2)
DENYING WITHOUT PREJUDICE PETITIONER'S MOTIONS
FOR SUMMARY JUDGMENT**

At a session of said Court, held in the U.S.
District Courthouse, Eastern District
of Michigan on September 21, 2009.

PRESENT: THE HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

On February 12, 2009, Petitioner Michael A. Freeman filed a *pro se* petition for a writ of habeas corpus under 28 U.S.C. § 2254. Portions of the habeas petition were not legible and Petitioner neither paid the filing fee nor submitted a proper application for leave to proceed *in forma pauperis*. Consequently, on February 19, 2009, United States Magistrate Judge R. Steven Whalen issued an Order to Correct Deficiencies in which he ordered Petitioner to submit (1) an application to proceed *in forma pauperis* and a certified statement of his trust fund account and (2) a legible amended habeas petition with two identical copies.

Pending before the Court is Petitioner's motion to set aside Magistrate Judge Whalen's order, filed March 9, 2009. In the alternative, Petitioner seeks an extension of time to comply with the order. He claims that he is indigent and currently unable to provide the extra copies. Petitioner, however, filed a proper application to proceed *in forma pauperis* and a certified statement of his trust fund account and, on May 27, 2009, the Court granted Petitioner's application to proceed *in forma pauperis*. Further, Petitioner filed an amended petition on June 1, 2009. The Clerk of Court then made the necessary copies of the petition for service on Respondent. His motion is therefore moot.

Also pending before the Court are Petitioner's motions for summary judgment, filed February 23 and March 9, 2009, which allege that Petitioner's state sentence should be vacated because there is no evidence to support his conviction for second-degree criminal sexual conduct. To date, Respondent has neither filed a responsive pleading nor the state court record. The responsive pleading is due on or before December 7, 2009. Therefore, Petitioner's motions for summary judgment are premature. The Court will reconsider the motions, if necessary, following receipt of the responsive pleading and record. It will not be necessary for Petitioner to renew his motions.

Accordingly,

IT IS ORDERED, that Petitioner's motion to set aside Magistrate Judge Whalen's Order to Correct Deficiencies is **DENIED AS MOOT**;

IT IS FURTHER ORDERED, that Petitioner's motions for summary judgment are **DENIED WITHOUT PREJUDICE**.

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Copy to:
Michael A. Freeman, #325901
4618 Edwards Avenue
Flint, MI 48505